RECEIVED
MAR 27 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-5996.

ORIGINAL COPY

DANIEL L. WILLIAMS,

Petitioner,

v.

DR. JAMES A. RICKETTS, WARDEN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
FROM THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant Attorney General

RICHARD L. CHAMBERS
First Assistant Attorney General

JOHN C. WALDEN
Senior Assistant Attorney General

SUSAN V. BOLEYN
Assistant Attorney General

Please serve:

SUSAN V. BOLEYN
132 State Judicial Bldg.
40 Capitol Sq., S.W.
Atlanta, GA 30334
(404) 656-6344

I N D E X

		Page(s)
I.	QUESTION PRESENTED	1
II.	PART ONE STATEMENT OF THE CASE	2 - 3
III.	PART TWO REASONS FOR NOT GRANTING THE WRIT	
	(1) The Supreme Court of Georgia properly held under Georgia law that the granting of a new trial after a jury verdict, based on the finding by the trial judge that the verdict was decidedly and strongly against the weight of the evidence under Ga. Code Ann. § 70-206, does not result in statutory double jeopardy and therefore Petitioner's guilty plea was not imposed in violation of his constitutional rights.	4 - 8
IV.	CONCLUSION	9
V.	CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITY

	Page(s)
Bethay v. State, 235 Ga. 371 (1975)	5
Green v. United States, 355 U.S. 184 78 S.Ct. 221 (1957)	5, 7
Marchman v. State, 234 Ga. 40 (1975)	4
Parham v. State, 137 Ga. App. 498 (1976)	4
Pryor v. State, 125 Ga. 750 (1906)	5
Ricketts v. Williams, 240 Ga. 148 (1977)	3, 4
Staggers v. State, 225 Ga. 581 (1969)	5
Taylor v. State, 110 Ga. 150 (1899)	5
United States v. Ball, 163 U.S. 662 16 S.Ct. 1192 (1896)	7
United States v. Jenkins, 420 U.S. 358 95 S.Ct. 1006 (1975)	8
United States v. Jorn, 400 U.S. 470, 91 S.Ct. 547 (1971)	7, 8
United States v. Wilson, 420 U.S. 332 96 S.Ct. 1013 (1975)	8

STATUTES CITED:

	Page(s)
Ga. Code Ann. § 2-108	6
Ga. Code Ann. § 26-507(d)(2)	1, 3, 4, 5, 6
Ga. Code Ann. § 70-202	3, 5
Ga. Code Ann. § 70-206	1, 3, 4, 5

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-5996

DANIEL L. WILLIAMS,

Petitioner,

v.

DR. JAMES A. RICKETTS, WARDEN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
FROM THE SUPREME COURT OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

QUESTION PRESENTED

1.

Whether the Supreme Court of Georgia correctly held that the granting of a new trial after a jury verdict, based on a finding by the trial judge that the verdict was decidedly and strongly against the weight of the evidence under Ga. Code Ann. § 70-206, does not result in statutory double jeopardy under Ga. Code Ann. § 26-507(d)(2) and whether this holding is in violation of Petitioner's constitutional rights under the Constitutions of Georgia and the United States?

PART ONE

STATEMENT OF THE CASE

Petitioner, Daniel L. Williams, was indicted by the Superior Court of Fulton County, Georgia, for the offense of rape. Petitioner was tried by jury for this offense on October 20, 1976. Following the trial, which lasted approximately three days, Petitioner Williams was found guilty and received a sentence of 20 years for this offense.

Petitioner's counsel filed a motion for new trial on November 16, 1976, seeking to set aside the jury verdict, his conviction and the sentence of the court, alleging the three so-called "general grounds." On November 23, 1976, the Superior Court of Fulton County granted the Petitioner a new trial based on Ground Number 2 of his Motion for New Trial, i.e., "because the verdict is decidedly and strongly against the weight of the evidence." Following the trial court's grant of a new trial, Petitioner entered a guilty plea to the offense of rape and received a five-year sentence.

In March of 1977, Petitioner filed his habeas corpus petition in the Superior Court of Butts County, Georgia. By order of that court, an evidentiary hearing was conducted on April 22, 1977. During the hearing, the circumstances concerning Petitioner's original trial, the granting of the motion for new trial, and the ultimate imposition of a guilty plea were presented to the court for its resolution.

Following the hearing in the Superior Court of Butts County, Georgia, the habeas corpus court entered a comprehensive order concluding that the granting of the new trial by the lower court constituted a legal bar to further prosecution of the Petitioner, and therefore, the guilty plea was invalid and the sentence of of the Fulton Superior Court should be set aside and vacated.

The court concluded that the granting of the Petitioner's new trial on the basis of Ground Number 2, that the verdict was decidedly and strongly against the weight of the evidence, was an adjudication that there was insufficient evidence to sustain Petitioner's conviction and any subsequent conviction would also be fatally defective. The court ordered that the Petitioner could not be retried for the offense of rape, as any subsequent prosecution will be barred by Petitioner's former jeopardy and set aside as void Petitioner's guilty plea on the charge of rape.

From the order of the Superior Court of Butts County, Respondent, Dr. James Ricketts, through the Attorney General of Georgia, appealed to the Supreme Court of Georgia. The Supreme Court of Georgia reversed the decision of the habeas corpus court on November 8, 1977, and held that the granting of a new trial by the trial judge under Ga. Code Ann. § 70-202 or Ga. Code Ann. § 70-206, does not result in a statutory double jeopardy bar under Ga. Code Ann. § 26-507(d)(2), see Ricketts v. Williams, 240 Ga. 148 (1977). It is from this order of the Supreme Court of Georgia that Petitioner now seeks review from this Court.

Additional facts will be developed as is necessary for a more thorough illumination of any issues raised in this petition.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. THE SUPREME COURT OF GEORGIA PROPERLY HELD UNDER GEORGIA LAW THAT THE GRANTING OF A NEW TRIAL AFTER A JURY VERDICT, BASED ON THE FINDING BY THE TRIAL JUDGE THAT THE VERDICT WAS DECIDEDLY AND STRONGLY AGAINST THE WEIGHT OF THE EVIDENCE UNDER GA. CODE ANN. § 70-206, DOES NOT RESULT IN STATUTORY DOUBLE JEOPARDY AND THEREFORE PETITIONER'S GUILTY PLEA WAS NOT IMPOSED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

Essentially, Petitioner contends that his constitutional right to due process of law has been violated by the Georgia Supreme Court's holding that a subsequent plea of guilty following the granting of a motion for new trial on the basis that the verdict was decidedly and strongly against the weight of the evidence under Ga. Code Ann. § 70-206, is not barred under Georgia statutory double jeopardy under Ga. Code Ann. § 26-507(d)(2). As Georgia precedent in support of his proposition, Petitioner cites the cases of Marchman v. State, 234 Ga. 40 (1975), and Parham v. State, 137 Ga. App. 498 (1976). It is the contention of the Respondent that a proper interpretation of these cases, when considered in the context of other Georgia cases dealing with this issue, and when considered in light of the Georgia Supreme Court's decision in this case, does not support the allegations of the Petitioner.

In the Georgia Supreme Court decision in the case of Ricketts v. Williams, 240 Ga. 148 (1977), the court noted that Marchman, supra, held that if an appellate court reverses a conviction on the basis that there was no evidence to support

the verdict, a retrial is barred by Ga. Code Ann. § 26-507(d)(2). However, the Georgia Supreme Court held that the granting of a new trial by the trial judge under Ga. Code Ann. § 70-202, or as in this case, Ga. Code § 70-206, that the verdict was decidedly and strongly against the weight of the evidence, does not result in a statutory double jeopardy bar. In other words, the Georgia Supreme Court refused to equate a finding that there was no evidence to support the verdict, which would support a claim of double jeopardy, with a finding that the verdict was decidedly and strongly against the weight of the evidence, which was held to not be violative of the principles of double jeopardy in this case.

The Georgia Supreme Court cited ample legal precedent stating that the granting of a motion for new trial on the ground that the verdict is decidedly and strongly against the weight of the evidence is a matter of sound legal discretion for the trial judge to determine. The Georgia Supreme Court went on to further state that a motion for new trial if granted at the trial level has been held to be a forfeiture of any right to plead former jeopardy because of the grant of a new trial under such Georgia cases as, Staggers v. State, 225 Ga. 581 (1969); Pryor v. State, 125 Ga. 750 (1906); and Taylor v. State, 110 Ga. 150 (1899). The Georgia Supreme Court also cited this as the general rule throughout the United States, citing Green v. United States, 355 U.S. 184, 78 S.Ct. 221 (1957).

As additional supporting authority for the decision of the Georgia Supreme Court in its finding that Petitioner's conviction pursuant to a guilty plea was not barred by double jeopardy, is its prior decision in the Bethay v. State, 235 Ga. 371 (1975), in which the court made the following interpretation of the meaning and application of Ga. Code Ann. § 26-507:

> "Thus, under this code section, where a person is prosecuted and convicted, a subsequent prosecution is barred if a subsequent proceeding (e.g. motion for new trial on the general ground, or appeal) resulted in the finding that the evidence did not authorize the verdict.
>
> Therefore, where a conviction is reversed upon a finding that the evidence did not authorize the verdict, the new trial is barred.[1/]"

In the footnote to this portion of the court's decision it stated, "Where the trial court grants a new trial on the ground that the verdict is against the weight of the evidence, a subsequent prosecution would not be barred by Ga. Code § 26-507." Thus, the Georgia Supreme Court was applying a consistent interpretation of this code section, in light of the Georgia constitutional provisions as to double jeopardy (Art. I., Sect. I, Par. VII of the 1976 Constitution of the State of Georgia, Ga. Code Ann. § 2-108), and applying it to the facts of the Petitioner's case.

Further, the Georgia Supreme Court was following both statutory and case law precedent, granting to the trial court the authority to disagree with a verdict supported by the evidence and to set it aside, and granting to both trial and appellate courts, the power to set aside verdicts that are contrary to law because there is no evidentiary support for them.

As federal authority in support of his proposition Petitioner cites the case of Green v. United States, 355 U.S. 184, 78 S.Ct. 221 (1957), a case cited in opposition to the Petitioner's contention by the Georgia Supreme Court. As previously stated, the Georgia Supreme Court cited Green for the proposition that it is well-settled that a person convicted of a crime waives his constitutional protection against being put twice in jeopardy and may be tried again for the same offense, where a verdict against him is set aside and a new trial granted on his motion in the trial court, or the conviction is reversed on appeal or other proceedings instituted by him. Therefore, the law as stated in Green, supra, would prohibit Petitioner from now pleading former jeopardy as a new trial was granted on his own motion.

Petitioner also cites United States v. Ball, 163 U.S. 662, 16 S. Ct. 1192 (1896). United States v. Ball held that a defendant can be tried a second time for an offense when his prior conviction for that same offense had been set aside on appeal. This Court stated in Ball, " . . . because it is quite clear that a defendant who procures a judgment against him upon an indictment to be set aside may be tried anew upon the same indictment, or upon another indictment, for the same offense on which he had been convicted." Following the rationale of Ball, supra, Petitioner's subsequent guilty plea to the charge of rape, following the trial court's grant of his motion for new trial, would not be barred by a double jeopardy claim.

United States v. Jorn, 400 U.S. 470, 91 S.Ct. 547 (1971), also cited by the Petitioner, dealt with the case of re-prosecution after a trial judge abused his discretion in declaring a mistrial. Double jeopardy was found to exist in that case. However, this Court in Jorn, supra, cited Ball, supra, and Green, supra, and made the following statement:

> "Further, it is clear beyond question that the due process clause does not guarantee a defendant that the government will be prepared, in all circumstances, to vindicate the social interest in law enforcement through the vehicle of a single proceeding for a given offense. Thus, for example re-prosecution for the same offense is permitted where the defendant wins a reversal on appeal of a conviction."

Thus, although the circumstances in Jorn, supra, were held to bar further prosecution, Jorn, consistently adheres to the settled principle of law that re-prosecution in cases such as the one sub judice, where the defendant has secured the reversal of his conviction by a motion for new trial or appeal, are not barred by the double jeopardy clause.

United States v. Wilson, 420 U.S. 332, 96 S.Ct. 1013 (1975), and United States v. Jenkins, 420 U.S. 358, 95 S.Ct. 1006 (1975), are both cases involving double jeopardy claims where the government has appealed from a ruling that has gone in the defendant's favor. Therefore, although these cases deal with situations in which re-prosecution is barred by double jeopardy, they deal with distinguishable circumstances from that of the case sub judice, in that, in those cases, the defendant did not secure the new trial by his own motion or appeal.

Therefore, it is the Respondent's contention that the Supreme Court of Georgia's decision in this case was properly based on both Georgia legal precedents and federal legal precedents and does not violate the principles of either double jeopardy or due process in light of these decisions.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant Attorney General

Richard L. Chambers
RICHARD L. CHAMBERS
First Assistant Attorney General

John C. Walden
JOHN C. WALDEN
Senior Assistant Attorney General

Susan V. Boleyn
SUSAN V. BOLEYN
Assistant Attorney General

Please serve:

SUSAN V. BOLEYN
132 State Judicial Bldg.
40 Capitol Sq., S.W.
Atlanta, GA 30334
(404) 656-6344